

Message Text

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ORIGIN OPIC-06

INFO OCT-01 NEA-10 ISO-00 EB-07 AID-05 L-03 TRSE-00 OMB-01

COME-00 CIAE-00 INR-07 NSAE-00 /040 R

DRAFTED BY OPIC/GC:MAKING

APPROVED BY EB/IFD/OIA:RJSMITH

OPIC/T:HKATZ

OPIC/GC:CHUNT

NEA/INS:RMORLEY

EB/IFD/OIA:DHSTEBBING

----- 003649

R 201806Z AUG 75

FM SECSTATE WASHDC

TO AMEMBASSY NEW DELHI

LIMITED OFFICIAL USE STATE 197795

E.O. 11652: N/A

TAGS:EFIN

SUBJECT:PIBCO COOLEY LOAN

REF: A. STATE 276894, DECEMBER 18, 1974 B. NEW DELHI
00029 C. NEW DELHI 03128 D. STATE 182496

SUMMARY: OPIC IS NOT OPTIMISTIC ABOUT OBTAINING FROM JOHNS
MANVILLE US (JM) OR JOHNS MANVILLE-INDIA (JM-INDIA)
TECHNICAL ASSISTANCE AND CAPITAL NECESSARY TO MAKE PIBCO
LIMITED (PIBCO) A VIABLE OPERATION. WE WILL MAKE FINAL
CONTACT WITH JM WITH REQUEST FOR TECHNICAL ASSISTANCE AND
CAPITAL. IF JM REFUSES OPIC REQUEST, WHICH IS LIKELY, SUIT
AGAINST JM-INDIA AND THE PUNJS UNDER THE OVERRUN COMMITMENT
WILL BE CONSIDERED, BUT IS AN UNATTRACTIVE OPTION. END
SUMMARY.

1. OPIC IS AWARE OF NEED FOR BOTH TECHNICAL AND MANAGERIAL
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ASSISTANCE FROM JM AND ADDITIONAL CAPITAL FROM JM, JM-INDIA
AND THE PUNJS TO MAKE PIBCO A VIABLE OPERATION. CAPITAL
ALONE WILL NOT INSURE PRODUCTION CAPACITY OF NOT LESS THAN
13,000 METRIC TONS PER ANNUM, AS SET FORTH IN LOAN AGREEMENT

BECAUSE, FOR WHATEVER REASON, PLANT IS NOT EFFICIENT.

2. IN DECEMBER 1974 OPIC REQUESTED JM TO A) ASSIGN TO PIBCO A QUALIFIED JM SUPERVISOR, PREFERABLY ALBERT GIROUARD, FOR A PERIOD OF AT LEAST SEVERAL MONTHS, B) APPOINT GIROUARD A DIRECTOR OF PIBCO, AND C) MEET IN INDIA WITH THE PUNJS, AID INDIA AND GIROUARD TO DECIDE WHAT STEPS ARE NECESSARY TO MAKE THE PROJECT VIABLE, WHO MUST TAKE WHAT ACTION AND WHO WOULD BEAR THE COSTS OF NECESSARY ACTION. JM REFUSED TO COMPLY WITH THIS REQUEST AND PROPOSED TO TAKE THE STEPS OUTLINED IN THE CINI-KATZ LETTER OF DECEMBER 12, 1974. THE EMBASSY WAS TOLD OF JM'S REFUSAL TO AGREE TO OPIC REQUEST IN REFTEL A, PARA. 1.

3. JM HAS TURNED ITS BACK ON PIBCO INsofar AS ACTION BEYOND THAT DESCRIBED IN THE CINI-KATZ LETTER IS CONCERNED. SINCE THE ACTION TO WHICH JM AGREES IS INSUFFICIENT TO OPIC, THERE IS NO INCONSISTENCY BETWEEN THE CINI-KATZ LETTER AND REFTEL A, PARA. 1.

4. AS A FIRST STEP, OPIC AGAIN WILL APPROACH JM WITH REPEAT OF REQUESTS STATED PARA. 2. EXPECT TO APPEAL TO TOP MANAGEMENT OF JM (AN EXTENSIVE USER OF OPIC PROGRAMS) ON BASIS OF JM'S BROAD RESPONSIBILITY TO "DO THE RIGHT THING" AND WOULD NOT RELY ON THREAT OF LITIGATION.

5. OPIC WILL ALSO EXPLORE POSSIBILITY THAT JM MAY BE WILLING TO SETTLE ITS OVERRUN COMMITMENT LIABILITY BY A DOLLAR PAYMENT DIRECT TO OPIC IN EXCHANGE FOR RELEASE OR TRANSFER

OF PIBCO COOLEY LOAN. REQUEST EMBASSY APPRAISAL OF JM'S CLOSING OUT ITS INVOLVEMENT IN PIBCO PROJECT IN THIS WAY.

6. DESIRE TO AVOID RELIANCE ON LITIGATION IN THIS CASE BASED BOTH ON CONCERN THAT REAL VALUE OF ANY RUPEE RECOVERY WOULD NOT WARRANT COSTS OF LITIGATION AND ALSO ON POSSIBLE OBSTACLES TO SUCCESSFUL ENFORCEMENT OF OVERRUN LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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AGREEMENT. WITH REGARD TO LEGAL OPINION ON INDIAN LAW APPLICABLE TO OVERRUN COMMITMENT, OPIC HAS PRELIMINARILY EXAMINED PROVISIONS OF INDIAN CONTRACT ACT REGARDING CONTRACTS OF GUARANTEE. WE DO NOT HAVE SOURCES AVAILABLE TO FOLLOW RATIONALE OF RAO'S OPINION THAT OVERRUN COMMITMENT COULD BE VIEWED AS A CONTRACT OF GUARANTEE. PLEASE ASK RAO TO OUTLINE BRIEFLY RATIONALE FOR SUCH AN ARGUMENT.

7. ALTHOUGH JM-INDIA APPEARS TO BE A CORPORATE SHELL, IT HAS OUTSTANDING OPIC INSURANCE CONTRACTS INSURING A 10 PER CENT EQUITY INTEREST IN AND FEES FROM A TECHNICAL ASSISTANCE AGREEMENT WITH SURI ASBESTOS INDUSTRIES (PRIVATE)

LTD. (SURI). CONSEQUENTLY JM-INDIA MAY HAVE FUNDS AND ASSETS IN INDIA WHICH COULD BE ATTACHED IN A LAWSUIT.

8. DOES EMBASSY HAVE INFORMATION REGARDING THE SALES POSITIONS AND ASSETS OF SURI?

9. IF ACTIONS STATED IN PARAS. 4 AND 5 DO NOT OBTAIN DESIRED RESULT, OPIC WILL CONSIDER RECOMMENDING CALLING THE LOAN.

10. OPIC EXPECTS JM RESPONSE TO ACTION STATED IN PARA. 4 BY SEPTEMBER 1, 1975. KISSINGER

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<< END OF DOCUMENT >>

Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: COOLEY LOANS, ECONOMIC ASSISTANCE
Control Number: n/a
Copy: SINGLE
Draft Date: 20 AUG 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ellisoob
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE197795
Document Source: ADS
Document Unique ID: 00
Drafter: OPIC/GC:MAKING
Enclosure: n/a
Executive Order: N/A
Errors: n/a
Film Number: D750288-1021
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t197508101/baaaasny.tel
Line Count: 123
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ORIGIN OPIC
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: ellisoob
Review Comment: n/a
Review Content Flags:
Review Date: 18 AUG 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 AUG 2003 by ElyME>; APPROVED <25 NOV 2003 by ellisoob>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: <DBA CORRECTED> gwr 971006
Subject: n/a
TAGS: EFIN, OPIC
To: NEW DELHI
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006